FILE COPY

FILED
OCT 24 1932
CHARLES ELMORE CROPLEY
CLERK

No. 356

In the Supreme Court of the United States

October Term, 1932.

INDIAN TERRITORY ILLUMINATING OIL COMPANY, A CORPORATION, *Appellant,*

vs.

BOARD OF EQUALIZATION OF TULSA COUNTY, OKLAHOMA, *Appellee.*

On Appeal from the Supreme Court of the State of Oklahoma

Jurisdictional Statement of Appellee.

W. L. COFFEY,
County Attorney,
Tulsa County, Oklahoma;
HUGH WEBSTER,
Assistant County Attorney,
Counsel for Appellee.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1932

No. 356

INDIAN TERRITORY ILLUMINATING OIL COMPANY, A CORPORATION, *Appellant,*

vs.

BOARD OF EQUALIZATION OF TULSA COUNTY, OKLAHOMA, *Appellee.*

On Appeal from the Supreme Court of the State of Oklahoma

JURISDICTIONAL STATEMENT OF APPELLEE.

May It Please the Court:

The appellee, in response to appellant's jurisdictional statement, respectfully represents:

The question presented is whether appellant, under the record has brought itself within the classification of a federal instrumentality, such as to raise a federal question and permit it to prosecute this appeal. We believe that under the stipulation and agreed statement of facts upon which this matter was heard and submitted, appellant is not a federal instrumentality; that there is want of a substantial federal question and that this appeal should be dismissed for want of jurisdiction.

The stipulation and agreed statement of facts (R. 16.)* recites in paragraph 9 thereof:

> "That pursuant to the terms of the Departmental lease, copy of which is attached hereto as Exhibit 'A', appellant as lessee paid or caused to be paid to the Superintendent of the Five Civilized Tribes, Muskogee, Oklahoma, for the said lessors, as royalty, the sum of 12½% of the gross proceeds of all crude oil extracted from said land, said payment being made at the time of removal of the oil. The said Indians and lessors owned no part of the oil in storage on January 1, 1929, nor will they receive any part of the proceeds of same when sold or disposed of by appellant."

It was further stipulated (R. 16..) that the oil sought to be taxed was produced from land in Seminole County which was owned by restricted Indians; that the oil was produced in 1927, commingled with oil from unrestricted land and immediately piped from the place of production to storage tanks owned by appellant in Tulsa County and there held in storage since 1927 as the property of appellant. The Supreme Court of Oklahoma in ruling upon this case, in its opinion (R. 70..) said:

> "If the oil sought to be taxed in this case had been stored on the premises from which it had been produced and if it had not been separated from the portion belonging to the lessor, under the rule stated in the *Jaybird* case, it would be exempt from ad valorem taxation. That rule is not applicable to the facts in this case which show that the portion of the oil produced, which belonged to the lessor, had been delivered to the Super-

*All references to the record are to pages of the certified unprinted record prepared by the Clerk of the Supreme Court of Oklahoma and on file with the Clerk of this Court. The record has not yet been printed.

intendent of the Five Civilized Tribes for the benefit of the lessor and that the lessor owned no part of the oil in storage."

We believe the above statement of the Oklahoma Supreme Court properly distinguishes this case from the *Jaybird* case relied upon by appellant and that appellant is not a federal instrumentality within the purview of the constitution, treaties and laws of the United States.

The opinion in the *Jaybird* case, 271 U. S. 609, states that the company had a mining lease on the restricted land on terms which provided for the payment of royalties or a percentage of the gross proceeds derived from the sale of ores mined; that the ad valorem tax there in controversy was assessed by the county officials on the ores *en masse* before sale and that the royalties or equitable interests of the Indians had not been paid or segregated.

In the case at bar, pursuant to the terms of the Departmental lease, appellant paid the royalty on removal of the oil from the lease, assuming entire and absolute ownership of the oil for such purposes as it saw fit. It thereby removed itself from the category of a federal instrumentality and entered the realm speculator and adventurer.

This honorable court in *Group No. 1 Oil Corporation* v. *Bass*, 283 U. S. 279, 282, 283, said:

"This court has consistently held that, where property or any interest in it has completely passed from the government to the purchaser, he can claim no immunity from taxation with respect to it, merely because it was once government owned, or because the sale of it effected some government purpose. *City of New Bruns-*

wick v. *United States, supra; Forbes* v. *Gracey, supra; Tucker* v. *Ferguson, supra;* see *Gromer* v. *Standard Dredging Co.,* 224 U. S. 362, 371, 32 S. Ct. 499, 56 L. ed. 801; *Choctaw, O. & G. R. R. Co.* v. *Mackey,* 256 U. S. 531, 537, 41 S. Ct. 582, 65 L. ed. 1076; *Central Pacific R. R. Co.* v. *California,* 162 U. S. 91, 125, 16 S. Ct. 766, 40 L. ed. 903; *Union Pac. Railroad Co.* v. *Peniston,* 18 Wall. 5, 35-37, 21 L. ed. 787; *Weston* v. *Charleston, supra,* page 468 of 2 Pet.

"Property which has thus passed from either the national or a state government to private ownership becomes a part of the common mass of property and subject to its common burdens. Denial to either government of the power to tax it, or income derived from it, in order to insure some remote and indirect antecedent benefit to the other, would be an encroachment on the sovereign power to tax, not justified by the implied constitutional restriction. * * *

"True, since restricted, allotted, or tribal lands of Indians are instrumentalities of the federal government, it has been held that neither leases of the lands, *Indian Territory Illuminating Oil Co.* v. *Oklahoma,* 240 U. S. 522, 36 S. Ct. 453, 60 L. ed. 779, nor gross income derived from them, *Choctaw, O. & G. R. R. Co.* v. *Harrison,* 235 U. S. 292, 35 S. Ct. 27, 59 L. ed. 234; see *Howard* v. *Gypsy Oil Co.,* 247 U. S. 503, 38 S. Ct. 426, 62 L. ed. 1239; *Large Oil Co.* v. *Howard,* 248 U. S. 549, 39 S. Ct. 183, 63 L. ed. 416; *Jaybird Mining Co.* v. *Weir,* 271 U. S. 609, 46 S. Ct. 592, 70 L. ed. 1112; nor net income, *Gillespie* v. *Oklahoma,* 257 U. S. 501, 42 S. Ct. 171, 66 L. ed. 338, may be taxed by a state. But no case has extended such immunity to property, real or personal, or income derived from its sale, where it has passed to the buyer by a completely executed act of sale, without restriction, and no interest in it has been retained for the benefit of the Indians. Whatever may

> be the appropriate limits of the immunity, as applied in this class of cases, those limits are clearly exceeded by that asserted here."

That case is fairly analogous to the case at bar. In that case under the Texas law, title to the oil, by the lease, vested in the lessee before severance and was held to be taxable. Likewise in the case at bar, title to the oil upon removal from the lease under the provisions of the Departmental lease as well as under the stipulation and agreed statement of facts, vested absolutely in the lessee.

The decision in *Gillespie* v. *State of Oklahoma*, 257 U. S. 501, relied upon by appellant, involved the question of the validity of a claim for state income tax and is not applicable herein. This court in *Burnett* v. *Coronado Oil & Gas Co.*, 76 L. ed. 590, 591, said:

> "We are disposed to apply the doctrine of *Gillespie* v. *Oklahoma* strictly and only in circumstances closely analogous to those which it disclosed."

For the foregoing reasons we respectfully submit that appellant is not a federal instrumentality; that there is want of a substantial federal question and that this honorable court should not take jurisdiction of this appeal.

Respectfully submitted,

W. L. COFFEY,
County Attorney,
Tulsa County, Oklahoma,

HUGH WEBSTER,
Assistant County Attorney,
Counsel for Appellee.